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E-file on June 1, 2010

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8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:

11 ROGER PIERRE BAYLOCQ.

CASE NO.: BK-N-10-51372-gwz

12 Chapter 11

13 MOTION FOR LEAVE TO REVOKE
14 DEBTOR'S LIVING TRUST

15
16 Debtor in Possession

Hearing Date: August 23, 2010

Hearing Time: 2:00 p.m.

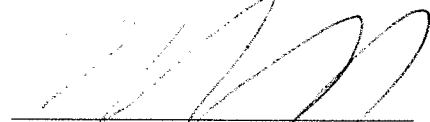
Est. Time: 30 minutes

17
18 COMES NOW the Debtor in Possession in this individual Chapter 11 Case, who seeks leave of
19 this Court to revoke the Roger Baylocq Living Trust, dated May 31, 2006 ("Trust"), more
20 particularly described in the Debtor's Declaration in support of this Motion, filed separately
21 herewith ("Declaration").

22 In support of this Motion, Debtor relies upon the Bankruptcy Code, 11 U.S.C. Sec. 541
23 thereof, the Trust, the Declaration and the below Points and Authorities.

24 Dated June 1, 2010

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POINTS AND AUTHORITIES

FACTS:

The voluntary petition in this case was filed on April 15, 2010. On April 29, 2010, Debtor filed schedules that have since been amended. Ownership of most of the property listed on those amended schedules is in the Trust. See Debtor's Declaration in support of the Motion, filed herewith.

ARGUMENT:

Page 13 (Article VII) of the Trust allows the Trustor to revoke and provides that in such event the trustee shall deliver the assets to the Trustor. Debtor is the Trustor/Settlor. Debtor desires to revoke the Trust. This Motion is brought as revocation may require prior bankruptcy court approval. As it stands now, the status of the Trust property as property of this estate is unclear. See 11 USC Sec. 541 and *In re Moffat*, 107 BR 255 (Bankruptcy Court, CD California 1989). According to *Moffat*, the Bankruptcy Trustee has discretion to revoke a Debtor's living trust. *Moffat*, 107 BR 260.

However, before the Debtor can exercise that discretion, the Bankruptcy Court may have to determine that the revocation will not harm the estate. Though the question facing this Court in *In re Silver State Hospitality*, Case BK08-51991-gwz (Findings of Fact, Conclusions of Law, filed December 2, 2008) was whether the Debtor could convey property held in a revocable trust to the estate without court approval rather than, as here, whether the Debtor can just revoke his living trust, post-petition, the issues are significantly the same as, procedurally, the normal practice is to have the Trustor, before revoking, convey the property out to himself (so as to avoid chain-of-title problems).

In *Silver State*, (Conclusion 2, page 4) this Court held:

The post-petition transfer of the Real Property to Debtor via the Quitclaim Deed from the Carson Family Trust, as Grantor, to Debtor, as Grantee, without court approval and outside


1 the ordinary course of Debtor's business is an invalid and ineffective transfer and is not
2 recognized by this Court.

3
4 In *Silver State*, the Court was concerned that the property transferred had no equity and was
5 heavily encumbered. This is not true here. The main asset of this estate, value-wise, as shown
6 by the Schedules, is the Gateway Inn, 1275 Stardust, Reno, NV. The Gateway Inn is owned by
7 EasyMark, LLC and the Trust owns 50% of EasyMark. The Schedules show that this 50%
8 interest has a value of approximately \$450,000, over and above secured debt. See Debtor's
9 Declaration, filed herewith.

10 Revoking the Trust will firmly put this and the other Trust assets into this Estate. The recently
11 concluded 341 meeting of creditors gave notice that Debtor is living at the Gateway Inn and that
12 his sole source of income at this time is his monthly draw from the Gateway Inn. Having the
13 ownership interest in all the foregoing properties owned by this Debtor will simplify the issues in
14 this case and afford this Trust property the clear benefit of the automatic stay.

15 Respectfully Submitted this 1st day of June, 2010.

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